

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Nathaniel Johnson,
Plaintiff
v.
Doe Kelly, et al.,
Defendants

2:11-cv-01858-JAD-VCF

Order Denying Motion to Enter Summary
Judgment By Default Based on L.R. 7-2
[ECF No. 93]

Defendants moved for summary judgment on December 20, 2016.¹ When the plaintiff failed to oppose the motion by the response deadline, defendants filed a separate motion asking the court to grant the motion under Local Rule 7-2, which allows the court to grant a motion when it is unopposed—**except when that motion is one for attorneys fees or summary judgment.**

In urging the court to enter summary judgment by default, defendants rely on an outdated and superseded version of Local Rule 7-2. Although Local Rule 7-2(d) previously suggested that the court could grant any unopposed motion, the local rules were amended nine months ago. The new version of the rule now clearly says: “The failure of an opposing party to file points and authorities in response to any motion, **except a motion under Fed. R. Civ. P. 56 . . .**, constitutes a consent to the granting of the motion.”² The local rule was amended to reflect the Ninth Circuit’s ruling in *Heinemann v. Satterberg*³ that the failure to oppose a motion for summary judgment does not permit the court to enter summary judgment by default by applying local rules

¹ ECF No. 91.

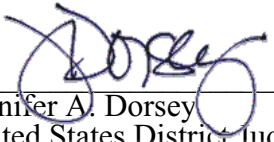
² L.R. 7-2(d) (emphasis added), available on the court’s website at: <http://www.nvd.uscourts.gov/>

³ *Heinemann v. Satterberg*, 731 F.3d 914, 917 (9th Cir. 2013) (“Because this local rule conflicts with the Federal Rule, it cannot provide a valid basis for granting a motion for summary judgment.”).

1 like 7-2(d).⁴

2 Accordingly, IT IS HEREBY ORDERED that Defendants' Motion Pursuant to Local
3 Rule 7-2 in Support of Motion for Summary Judgment **[ECF No. 93] is DENIED**. The court
4 will address the motion for summary judgment [ECF No. 91] on its merits in due course.

5 DATED: February 2, 2017

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8 Jennifer A. Dorsey
9 United States District Judge
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25 ⁴ See Summary of Amendments to Local Civil Rules, available at [http://www.nvd.uscourts.gov/](http://www.nvd.uscourts.gov/Files/Summary%20of%20Amendments%20to%20Local%20Civil%20Rules.pdf)
26 Files/Summary%20of%20Amendments%20to%20Local%20Civil%20Rules.pdf (explaining,
27 "Subsection (d) is amended to exclude motions for summary judgment and motions for
28 attorney's fees from those that automatically may be granted if unopposed.").